

IN THE UNITED STATES DISTRICT COURT2019 Feb-25 PM 02:06
U.S. DISTRICT COURT
N.D. OF ALABAMA

Timothy Dempsey,
Petitioner,

V.

2019 FEB 22 Case No. _____

Warden Toney Deborah,
Deborah Toney,
Respondent,

U.S. DISTRICT COURT
N.D. OF ALABAMA

Attachment To Federal Habeas Corpus

Ground (A). When the State failed to disclose and/or produce any information within possession of any attorney or agent in the prosecutor's office it violated its duty to disclose and the Court order of July 23, 2008. (" See Giglio v. United States, 405 U.S. 150 (1972), and any known information within possession and/or control of Cooperating law enforcement personnel. See: United States v. Brooks, 966 F.2d 1500 (D.C. Cir. 1992).

The prosecutors also violated Rule 16 Ala.R. Crim. P.

(1)

Ground (B). The petitioner's record on appeal CR13-0251, does not contain any District Court records nor transcripts.

This is an incomplete record on Appeal and a silent record.

"Where the record is silent on appeal, it will be presumed that what ought to be done was not only done, but rightly done." Owens v. State, 597 So.2d 734, 736 (Ala. Crim. App. 1992), quoting Jolly v. State, 405 So.2d 76, 77 (Ala. Crim. App. 1981)."

*Please apply the above ground of record being silent to all other grounds of silent record previously raised.

Ground (c) Trial counsel's failure to object with specific grounds are not listed in the transcripts of trial.

~~Trial Counsel's failure to ensure his objections were~~

~~Trial Counsel and appellate Counsel~~

*Petitioner is out of paper or would have rewritten this page.

Ground (c) petitioner could not raise all his claims for ineffective assistance of counsel, due to the record on appeal took over 1 year and seven months to complete.

ALABAMA Rules of Appellate procedure require Motion for new trial to be filed within 30 days. Ala. R. App. P. 24.

Therefore, the "Motion" itself was not able to be completed with specific grounds nor all grounds.

This violated petitioner's 14th amend. of the U.S. Const. to receive due process of Law.

Ground (d) Trial Counsel failed to request Jury instruction on lesser included offenses. Alibi instruction nor what facts convictions were based upon.

This is a Batson Claim?

In Mekinney v. State, 654 So.2d 95, 99 (Ala. Crim. App. 1995) (quoting Buice v. State, 574 So.2d 55, 57 (Ala. Crim. App. 1990)).

Ground (E) Petitioner grounds may not meet the "specific facts" and or with the specificity required.

Petitioner requests written notice from this Honorable Court in this event.

Petitioner shows "specific facts" pled in a pro-se complaint must be considered in opposition to summary judgement. See Caldwell v. Wardew, FCT Talladega, 748 F.3d 1090, 1098 (11th Cir. 2014) (~~citing~~ Citing Perry v. Thompson, 786 F.2d 1093, 1095 (11th Cir. 1986)).

Hughes V. Rowe, 449 U.S. 5, 9 (1980), ...because the plaintiff is pro-se, the court must construe the Complaint more liberally than it would pleadings drafted by lawyers.

Pro-se pleadings are held to a less stringent standard than pleadings drafted by attorneys and will, therefore, be liberally construed." Boxerx v. Harris, 437 F.3d 1107, 1110 (11th Cir. 2006).

Ground (F) Petitioner's Court Reporters Act, claims under 28 U.S.C. § 753(b) may lack ~~specif~~ specificity.

Petitioner shows that in *Ex parte Godbolt*, 546 So.2d 991 (Ala. 1987), that "The Fifth Circuit Court of Appeals recognized in the cases that there are times when reversible error should be presumed when a court reporter fails to comply with the Court Reporter Act, 28 U.S.C.A. § 753(b).

Hardy v. United States, 375 U.S. 277, 266 So.3d 2993 84 S.Ct. 424, 11 L.Ed.2d 331 (1964)... appellant must show that failure to record... prejudices his appeal.

"Key fact" for petitioner's claims/grounds on an incomplete transcript of all proceedings is "Petitioner's Appellate Counsel Was Not The Same as Trial Counsel".

United States v. Vasquez, 234 Fed Appx. 310
"When as here, a criminal defendant is represented on appeal by counsel other than the attorney at trial, the absence of a substantial and significant portion of the record, even absent any showing of specific prejudice or [§ 734 Fed. Appx. 313] error, is sufficient to mandate reversal".

Petitioner cites in part, "Failure to record Voir dire examination of prospective jurors requires reversal of conviction... harmless error. Parrott v. United States, (1963, CA 10 Okla) 314 F.2d 46.

Failure of court reporter to transcribe entire proceedings of condemnation trial constituted reversible error. Calhoun v. United States, (1967, CA 5 Miss) 384 F.2d 180, 11 FR Serv. 2d 1498.

Ground (G) The Grand Jury Foreman, did not return any of the "eight indictments" "in open court" and file them with "eleven members" of the Grand Jury.

The STATE OF ALABAMA, violated Rule 12.8 (b) Ala. R.C.P. This violated petitioners 14th amend. right to the U.S. Const., to receive due process of law.

Rule 12.8 (b) Return of Indictment - "When an indictment is found, it MUST be endorsed "A True Bill", and the indictment MUST be

Ala. Statute § 12-16-204, Ala. Code 1975, was violated by the State. The petitioner nor Counsel was present in court for the return of any single and or eight indictments.

The records silent and wrong on the record of appeal, as there is no transcript of the proceeding.

* Statute § 12-16-204, states "The indictment shall be returned and filed in open court by the foreman in the presence of at least eleven (11) other members of the grand jury.

Petitioner's Record on Appeal has eight copies of unsigned indictments by the grand jury foreman. "With wrong bail amounts that were changed in 2010."

Original indictments were in 2008.
This is evidence of forged documents, in CR 13-0251, CC 08 590, 591, 592, 593, 594, 595, 596, 597.

Failure of strict compliance with 28 U.S.C.S. § 753(b) requiring court reporter to be present at all proceedings in criminal cases had in open court and to report such proceedings and file his transcript will result in unnecessary post conviction hearings to determine what
(7)

was done when most accurate record transcript
of what actually took place ... ~~MUST~~ be
stricken and defendant afforded rights to
plead anew where there was no record of
proceedings at which plea was accepted.
Herron v. United States, (1975, CA 4 NC)
512 F.2d 439.

When criminal defendant is represented on
appeal by counsel other than attorney at
trial, absence of substantial and significant
portion of record required by 28 U.S.C.S. 753
(b) is sufficient to mandate reversal, even
absent any showing of specific prejudice
or error... New appellate counsel is foreclosed
from examining for possible error, substantial
and crucial portion of trial renders illusory
appellant's right to appeal and appellant is under
no burden to show specific prejudice.

United States v. Selva, (1977, CA 5 FLA) 559 F.2d
1303 (criticized in Gov't of the V.I. v. Weatherwax
(1993, DC VI) 1993 U.S. Dist. Lexis 21412) and
(criticized in United States v. Brand, (1996, CA i
Puerto Rico) 80 F.3d 560)...

This also violates petitioner's 6th amend. Right to
appellate counsel that is effective, Court

of Criminal Appeals, illegally authorized his withdraw.

Court of Criminal Appeals, Clerk, accepted the incomplete record on appeal and then verified it to the ALABAMA SUPREME COURT, as true and complete.

Ground (H) Petitioner has raised all grounds and or claims under his 14th amend. right to receive due process of the law being violated under the U.S. Const. And some as a Sixth amend. right violation under the U.S. Const.

* That is now still suffering a Sixth amend. U.S. Constitutional right to Counsel at a critical stage.

Petitioner's constitutional violations that occurred in trial [and pretrial] and on Direct Appeal, are not harmless error. Criminal acts occurred in pretrial hearing(s), District Court violations under 18 USC S 241 and 242, pre trial Motion hearings, Arraignment procedure, and finally trial proceedings. These acts are criminal in nature and went on all the way through his appellate procedures.

They have caused him to be "Kidnapped" through a judicial proceeding that turned into a CRIME SCENE.

Petitioner is of now still Kidnapped and is illegally restrained of his liberty, in Violation of the Fourteenth Amend. of the U.S. Const.

*

"*Chapman v. California*, 386 U.S. 18, 17 L.Ed. 2d 705, 87 S.Ct. 824 [^{*}pp. 378] (1967), established the federal nature of the harmless-error standard to be applied when constitutional rights are at stake.

Such rights, we stated, are rooted in the Bill of Rights, offered and championed in the Congress by James Madison, who told the Congress that the 'independent' federal Courts would be the 'guardians of those rights.'

Id., at 21, 17 L.Ed. 2d 705, 87 S.Ct. 824 (footnote omitted).

Under Chapman, federal law requires reversal of a state conviction involving a constitutional violation that is not harmless beyond a reasonable doubt.

A defendant whose conviction has been upheld despite the occurrence of such a violation certainly is "in custody in violation of the Constitution or laws... of the United States," 28 USC § 2254(a) [^{*}28 USCS § 2254(a)], and therefore entitled to habeas relief.

* James Madison's statement - "Federal Courts are guardians"

Ground (I) Court of Criminal Appeals and
JEFFERSON County Circuit Court,
Violated Petitioner's right to
a fast and fair [timeline] to
have his Record on Appeal Completed.
A Fourteenth Amend. right
Violation of the U.S. Const.

Petitioner's record on appeal, CR 13-0251, took
over 1 year and 7 months to complete.
This not only violated his Motion For New
Trial Hearing [held 1 year later], but had
his sit in prison 1 extra year and 7 months
before he could even prepare for his direct
appeal. "Petitioner illegally, unlawfully, and
wrongfully convicted, kidnapped by delay to
access to any court.

This 1 year and seven months delay Violated
Ala.R. App.P., Rule 11(c) ... but no more than
a total of four (4) such extensions shall be granted
by the trial court ... and in no event shall an
extension be granted to a date later than 84
days(12 weeks from the filing of the notice
of appeal.

Nettles v. Nettles, 283 Ala. 457, 218 So. 2d
269, 1969, Ala. Lexis 1216 (1969)

"The Court has no authority to read an extra day into the rule; being one day late is the same as being too late."

Rule 1.2 Ala. R. Cr.P., was violated from (trial to) direct appeal notice and record on appeal completion.

"The rules are intended to provide for the just and speedy determination of every criminal proceeding. They shall be construed to secure simplicity in procedure, fairness in administration, and the elimination of unnecessary delay and expense, and to protect the rights of the individual while preserving the public welfare."

See: CR 13-0251, Records - "From Court"

See: CC08-590 thru 597, records - "From Court"

Ground (5) Petitioner's convictions and sentences are unauthorized by law and are a Jurisdictional Claim.

Petitioner's Federal Habeas Corpus, proves through previous grounds that once this Honorable Court reviews them and rules upon them.

Petitioner shows under ALABAMA Law, "Matters concerning unauthorized sentences are jurisdictional," Hunt v. State, 659 So.2d 998, 999 (Ala. Crim. App. 1994). Ferguson v. State, 565 So.2d 1172, 1173 (Ala. Crim. App. 1990).

The false evidence, perjury, statute violations, rule violations, alibi, incomplete record, denial of counsel at a critical stage [now], 5th amend. double jeopardy claim, criminal acts [State and Federal]. Prove that he is illegally imprisoned and sentences and convictions are mandated to be reversed. Hence are jurisdictional and are ~~timeliness~~ to be raised by petitioner.

Furthermore, petitioner is not required to reraise issues previously decided by the State's highest court.

Respectfully submitted on this the 21st, day of February, 2019.

Timothy Dempsey

Timothy Dempsey

Petitioner

565 Bibb Lane
Brent, AL 35034